

UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION

MDL NO. 1968

Case No.: 2:08-md-1968

THIS DOCUMENT RELATES TO:
Case No. 2:09-cv-0671

DECLARATION OF DON A. ERNST IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
MOTION TO EXCLUDE PLAINTIFFS' GENERAL LIABILITY EXPERTS,
AND MOTION IN LIMINE TO EXCLUDE UNRELIABLE HEARSAY

I, **DON A. ERNST**, hereby declare:

1. I am an attorney licensed to practice in the State of California and before this Court with respect to the above-captioned MDL No. 1968 and related action. I am lead counsel of record for Plaintiffs in the matter *Kathy McCornack, et al. v. Actavis, et al.*, Case No. 2-cv-0671, ("*McCornack* Plaintiffs" or "Plaintiffs"), and for the McCornack Plaintiffs in the related above-captioned MDL action. I respectfully submit this declaration in opposition to defendants' motion for summary judgment in all of the MDL cases (Doc. Nos. 523-524), motion to exclude plaintiffs' general liability experts (Doc. Nos. 525-526), and motion to exclude unreliable hearsay (Doc. Nos. 527). I have been actively involved in all aspects of this litigation, and I have first-hand knowledge of the matters stated in this declaration. If called upon to do so, I would testify in accordance with this declaration.

2. Plaintiffs' Exhibits 16-259 and Plaintiffs' Exhibits M14-M69, served and submitted herewith, are true and correct copies of plaintiffs' deposition exhibits (bearing the same number) in the general liability phase of the above-captioned MDL action, as maintained by the Crivella West document repository with respect to this litigation. Where a Bates No. is indicated, said documents were produced in discovery in this litigation by the party indicated in the table of contents of plaintiffs' exhibits, as follows:

"ACTAV"	Actavis Totowa, LLC and related defendants
"MLYN"	Mylan Bertek and related defendants
"UDLL"	UDL Laboratories

3. Plaintiffs' Exhibit 500, 511, 514, 516, 605, 607, and 616, served and submitted herewith, are true and correct copies of expert reports served by the parties in this action, as identified in the table of contents of plaintiffs' exhibits.

4. Plaintiffs' Exhibits 501-502, 505, and 617, served and submitted herewith, are true and correct copies of documents produced in this litigation by defendants, as maintained by the Crivella West document repository with respect to this litigation. Where a Bates No. is indicated, said documents were produced in discovery in this litigation by the party indicated in the table of contents of plaintiffs' exhibits, as follows:

"ACTAV"	Actavis Totowa, LLC and related defendants
"MLYN"	Mylan Bertek and related defendants
"UDLL"	UDL Laboratories

5. Plaintiffs' Exhibits 503, 507, 508, 509, 510, 512, 513, 515, 600-604, 606, 608-615, and 619, served and submitted herewith, are true and correct copies of the transcripts of deposition and deposition exhibits in this action, as identified in the table of contents of plaintiffs' exhibits.

6. Plaintiffs' Exhibits 504 and 506 are true and correct copies of records previously produced by CVS-Caremark in this action.

7. Plaintiffs' Exhibit 618 consists of true and correct copies of photographs taken by my office of Daniel McCornack's Digitek pill bottles, provided to me by his surviving wife Kathy McCornack, which photos were previously produced in this action by the McCornack Plaintiffs.

8. Plaintiffs' Exhibit 620 is a true and correct copy of the Declaration of David M. Bliesner, submitted in opposition to the above-described motions.

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9. Plaintiffs' Exhibits are submitted tentatively under seal, as exhibits to a motion to seal field therewith, pursuant to Pretrial Order No. 12.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on the 24th day of August, 2011, in San Luis Obispo, California.

/s/ Don A. Ernst

Don A. Ernst

Submitted by:

Don A. Ernst (CA SBN 065726)

Attorneys for *McCornack* Plaintiffs

Ernst Law Group

1020 Palm Street

San Luis Obispo, CA. 93401

Tel: 805-541-0300

Fax: 805-541-5168

E-mail: de@ernstlawgroup.com